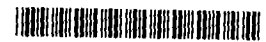


Trademark  
246/176

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: SP Systems, LLC  
Trademark: FARM & HOME  
Serial No.: 75/932,869  
Attorney: Robert Dickerson  
Address: Jones, Day, Reavis & Pogue  
555 W. 5<sup>th</sup> Street, Suite 4600  
Los Angeles, CA 90013

BEFORE THE  
TRADEMARK TRIAL  
AND APPEAL BOARD ON  
APPEAL



10-21-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #70

**REQUEST FOR RECONSIDERATION**

Commissioners for Trademarks  
BOX ITU FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

Applicant respectfully requests reconsideration of the Decision of the Trademark Trial and Appeal Board, dated September 20, 2002 (Paper No. 12) ("TTAB Decision") in which the refusal to register the above-captioned mark was affirmed. The Trademark Trial And Appeal Board's

**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Post Office to Addressee' in an envelope addressed to Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

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*Tracey L. Waterr*  
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decision, distilled to its essence, is that the mark is descriptive because "FARM & HOME" when used with the goods would immediately lead consumers to "immediately understand" that "the sprayers are for farm and home use." (TTAB Dec. p. 5).

It is respectfully suggested that this Decision is in error, and that reconsideration of the Decision and reversal of the rejection is required in light of the following comments.

If, as the TTAB Decision suggests, a mark is at least descriptive when it gives some general indication where the goods or services may be used, then each of the following registrations on the Principle Register were issued in error.

<u>Reg. No.</u>	<u>Mark</u>	<u>Goods</u>
0735208	Farm And Home	Paint, Varnish, and Enamel
2012057	Farm & Home Publishers	Dissemination of advertising matter.
2394362	Office At Home	Bank Checks.
2305579	At Home & In The Office	Paper Roll Towels and Paper Folded Towels, Bath Tissue and Facial Tissue.
1862425	Home 'N Car pack	Flashlights.
2404427	Home 'N Auto	Cheese cloth and shop towels.
1090925	Home 'N Auto	Industrial Towels, Knit Polishing Cloth, Synthetic Sponges in Addition to Those of Cellulose, Bug Sponges (Synthetic Sponge Encased in Nylon Fabric), and Whisk Brooms.
0939315	Home 'N Auto	Chamois.
2616308	By Land Sea Air	Providing an Interactive Web Site Featuring Freight Transport Rates, Allowing Site Users to Evaluate and Negotiate Prices.
2577060	Air Sea Land	Audio Production, Videotape Production, And Motion Picture Film Production; Training in The Use of Cameras, Video Camera Cranes, And Motion Picture Film Editing Equipment; Rental of Videotape Production Editing Equipment and Duplication Equipment Used in Videotape Production and Motion Picture Film Production.
2329407	Land & Sea	Boat, Nature and Wildlife Figurines, and Wall Plaques, All Made of Wood and Resin.

<u>Reg. No.</u>	<u>Mark</u>	<u>Goods</u>
2320702	Land & Sea	Engineering performance, evaluating equipment, namely, dynamometers and data acquisition systems, namely, computer with sensors to collect data and evaluate engine characteristics.  Marine engine parts, namely, rods, camshafts, fuel jets, fuel pumps, cylinder heads, exhaust rings, piston rings and reed valves.  Watercraft parts, namely, transoms, mounting brackets for motors, sleeves, mechanical control cables, propellers and nose cones.
1432902	Home & Away	Magazine Relating to Automobiles and Travel.
1888450	Home And Away	Personal checks and continuous and cut sheet computer checks.
2277123	Home Away From Home	Hotel services.
2263246	Home And Away	Communication services, namely, cellular telephone services.
2539006	Home Away From Home	Infant carrier worn on the body that converts into an infant seat.
2629857	Home Away From Home	Portable infant bouncer and playpen with canopy, infant sleep and head support, portable bassinet, infant rocker and infant seat.
2566099	Home & Away	Umbrellas.

It is, indeed, difficult to reconcile how FARM AND HOME could be registrable for paint and varnish (that can of course be used around the farm and home), while FARM & HOME for backpack sprayers cannot be registered on the Principal Register. The same can be said for HOME and AWAY for umbrellas, HOME & AUTO for chamois, HOME 'N AUTO for sponges, and LAND & SEA for photographic cameras.

It is submitted that these registrations were not issued in error, but that the TTAB Decision is erroneous in that takes the correct ruling regarding "ATTIC" in *In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998), and untenably attempts to extend its reach to the facts here.

In *In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998), the mark ATTIC was deemed not entitled to registration because the Board found "that the term 'Attic' would be understood by the relevant public as referring to [sprinklers for fire protection of attics]." 49 USPQ2d 1197 fn. 1. Indeed, based upon the product literature submitted by the applicant, it was clear that the product was specifically designed to meet the well-known problems inherent in providing sprinklers in attics, such that there was a subcategory in the fire protection sprinkler industry for attic sprinklers. The Board specifically commented in that regard that there was little reason for the applicant to adopt the term ATTIC if the sprinklers to which it was applied could be installed in the kitchen or bedroom. In other words, in that case, there was a known need for a specifically designed "attic sprinkler" and that was made clear in the product literature the applicant produced. That the sprinkler was an "attic" sprinkler was significant under those facts. Under those circumstances, the mark was not only descriptive, it was found to be generic.

In contrast, the mark here, like the marks in the previously registered marks listed above, does not relate to a specific product for a specific need. There is nothing in the record here, nor could there be, that establishes there is a well-recognized problem in providing a back-pack sprayer for use on farm and homes, or that there is a common usage of the term "farm & home" in connection with backpack sprayers. There is no understood or recognized subcategory in the backpack sprayer industry for a "farm and home" sprayer as there was for an "attic sprinkler" in that industry. That the sprayer here can be used around the farm or the home is not a significant feature of the product. There is nothing in the record to prove, nor could there be, that applicant's sprayer was specifically designed to solve some problem or to fill some well-understood need for sprayers that can be used in these two locales, but no others.<sup>1</sup>

Like the previously registered marks that combine two or three different locales from the group FARM, HOME, AUTO, LAND, SEA, OFFICE, etc., the purpose of the mark here is to suggest something in a vague way about the goods or services, not to immediately convey a

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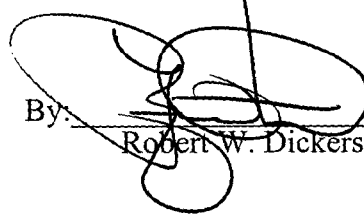
<sup>1</sup> The case law cited by the Board confirms that the descriptive feature must be a "significant" characteristic of the product or service. *See, e.g., In re Gyulay*, 3 USPQ2d 1009. That is simply not the case here.

significant feature of the product, or that the product has a specific use. Quite to the contrary, the mark here suggests that the product does not have a significant, identifying feature or purpose, but that it is off a more generalized, all purpose design. Therefore, the "ATTIC" case upon which the Board relied does not apply here, and does not justify the Board's affirmance of the Examining Attorney's rejection.

For these reasons, reconsideration of the Board's Decision is respectfully requested.

Respectfully submitted,

JONES, DAY, REAVIS & POGUE

By: 

Robert W. Dickerson

Dated: 10-21-02

555 W. 5<sup>th</sup> Street, Suite 4600  
Los Angeles, CA 90013  
(213) 489-3939